

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MILES ORLANDO LEE,

Petitioner,

ORDER

v.

08-cv-340-bbc

WARDEN HOLINKA; CAPTAIN
TRATE; CHAPLIN LIBERSTEIN;
C/O FRUIK; FOOD SERVICE PEDERSON;
LT. SIENA; LT. SADOWSKI; and
SPECIAL HOUSING UNIT PROPERTY
OFFICER (John Doe),

Respondents.

On September 16, 2008, I denied petitioner leave to proceed in forma pauperis in this action after concluding that his complaint violated Fed. R. Civ. P. 8 and 20. Subsequently, at the court's invitation, petitioner filed a proposed amended complaint. In an order dated October 2, 2008, I concluded that although the proposed amended complaint no longer violated Rule 8, it contained seven distinct unrelated claims against different respondents or sets of respondents, which had to be severed into separate lawsuits under Fed. R. Civ. P. 20 and George v. Smith, 507 F.3d 605 (7th Cir. 2007). Therefore, I gave petitioner an

opportunity to choose which one of his seven lawsuits he wished to pursue in the context of this action, and which of the others he wished to pursue separately or dismiss without prejudice. I told petitioner that if, by October 16, 2008, he failed to respond to the order, I would enter an order dismissing the lawsuit as it presently exists for his failure to prosecute. Subsequently, in an order dated October 27, 2008, I extended the October 16 deadline to November 10, 2008.

On November 10, 2008, instead of choosing a lawsuit on which to proceed, petitioner filed a notice of appeal. In the notice petitioner states,

I, Miles Orlando Lee, the petitioner, want to appeal the above case to the U.S. Court of Appeals (7th Circuit). I want to appeal the “final judgment” of #08-cv-340-bbc. Thank you for extending your order. However, I know pursuant to Fed. R. Civ. P. that you are violating my Sixth Amendment constitutional right to a fair trial. I want to appeal!?

Because the November 10 deadline passed without a response from petitioner, I am dismissing his case for his failure to prosecute in accordance with the October 2 and October 27 orders. Petitioner’s notice of appeal will be treated as having been filed on this date. Fed. R. App. P. 4(a)(2).

Because petitioner has not paid the \$455 fee for filing an appeal, I presume he wishes to proceed in forma pauperis. However, I cannot grant petitioner Lee’s request because I am certifying that his appeal is not taken in good faith pursuant to 28 U.S.C. § 1915(a)(3).

Petitioner appears to want to challenge on appeal my determination that because his

complaint violates Rule 20, he cannot proceed on all of his claims in one lawsuit. However, he does not suggest how the decision is erroneous. In particular, he does not argue that I misunderstood his claims or misidentified the respondents relating to those claims. He appears simply to want to press his position on appeal that he should be allowed to pursue in a single lawsuit unrelated claims against unrelated respondents. Because the law in this circuit is settled on this point, I cannot find that petitioner's appeal is taken in good faith.

If petitioner intends to challenge this court's certification that his appeal is not taken in good faith, he has 30 days from the date he receives this order in which to file with the court of appeals a motion for leave to proceed in forma pauperis on appeal. His motion must be accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that

1. This case is DISMISSED for petitioner's failure to prosecute.
2. Petitioner is DENIED leave to proceed in forma pauperis on appeal from the decision that his case would be dismissed for failure to prosecute unless, on or before November 10, 2008, he rectified the violations of Fed. R. Civ. P. 20 in his complaint.

3. I certify that petitioner's appeal is not taken in good faith.

Entered this 14th day of November, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge